

EXPLANATORY STATEMENT
Select Legislative Instrument No. 3, 2015

Issued by authority of the Assistant Treasurer

Corporations Act 2001

Corporations Amendment (Register of Relevant Providers) Regulation 2015

Section 1364 of the *Corporations Act 2001* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 922A of the Act provides that the regulations may prescribe the establishment of and maintenance of registers relating to financial services.

Section 926B of the Act provides that the regulations may provide that Part 7.6 of the Act applies as if specified provisions were omitted, modified or varied as specified in the regulations.

The *Corporations Amendment (Register of Relevant Providers) Regulation 2015* (the Regulation) makes a number of amendments to the *Corporations Regulations 2001* (the Principal Regulations) to establish a register of all financial advisers.

The purpose of the Regulation is to create a public register of all natural persons providing personal advice on more complex products to retail clients.

A person who carries on a financial services business must obtain and maintain an Australian Financial Services Licence (licence) with the Australian Securities and Investments Commission (ASIC). This person is referred to as a financial services licensee (licensee). Among other things, a person carries on a financial service business if they provide financial product advice.

Individuals may provide financial product advice in a range of circumstances. They may be licensees themselves; directors or employees of licensees; or director/non-employee representatives of licensees (these individuals are referred to as ‘authorised representatives’). In certain circumstances, an authorised representative can ‘sub-authorise’ another authorised representative to act on behalf of the licensee.

ASIC uses the information collected by licensees on authorised representatives to maintain a register of these individuals. ASIC also maintains a register of licensees. However, there is no register that provides information to consumers, the financial advice industry, or ASIC regarding employee and director representatives of licensees.

The purpose of the Regulation is to create a register of all natural persons who provide personal advice on more complex products to retail clients under a licence. This would enable consumers to verify that their individual financial adviser is

appropriately authorised to provide advice and find out more information about the financial adviser before receiving financial advice.

The benefits of the new public register include:

- providing an easily accessible central record of the competency, employment history and misconduct of individual financial advisers;
- assisting ASIC in its compliance activities and ability to respond to problem advisers; and
- providing broad support for industry efforts to improve professionalism of the industry.

The establishment of a public register of financial advisers was a recommendation of the 2014 Senate Economic References Committee Report into the performance of ASIC.¹

The Government accepted this recommendation, and in July 2014, the Acting Assistant Treasurer, Senator the Hon Mathias Cormann, established an industry Working Group (the Working Group) to advise the Government on a number of issues concerning the register, including: its scope and content; whether reporting obligations should be placed on licensees and/or individual financial advisers; and potential privacy issues. The form of the new register largely reflects the recommendations of the Working Group.

The Financial System Inquiry, which was released in December 2014, also recommended that an enhanced register of advisers be introduced.²

Consultation with a range of stakeholders was undertaken on the Exposure Draft in December 2014. Following stakeholder feedback, a number of changes were made to the Regulation.

Details of the Regulation are set out in the Attachment.

The Act does not specify any conditions that need to be satisfied before the power to make the Regulation may be exercised.

Under the *Corporations Agreement 2002*, the Commonwealth must consult with the Legislative and Governance Forum for Corporations before making amendments to certain provisions of the Principal Regulations. The Council has been consulted.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commenced on the day after it was registered.

¹ The 2014 Senate Economic References Committee Report into the performance of ASIC is available at: http://www.apf.gov.au/parliamentary_business/committees/senate/economics/asic.

² The 2014 Financial System Inquiry Report is available at: <http://fsi.gov.au/>.

ATTACHMENT

Details of the Corporations Amendment (Register of Relevant Providers) Regulation 2015

Section 1 – Name of Regulation

This section provides that the name of the Regulation is *the Corporations Amendment (Register of Relevant Providers) Regulation 2015* (the Regulation).

Section 2 – Commencement

The Regulation commenced on the day after it was registered.

Section 3 – Authority

The Regulation was made under the *Corporations Act 2001* (the Act).

Section 4 – Schedule(s)

This section provides that the schedules amend the *Corporations Regulations 2001* (the Principal Regulations).

The Regulation is divided into three schedules.

Schedule 1 inserts Schedule 8D into the Principal Regulations. Schedule 8D inserts provisions into the Act to impose obligations on licensees to lodge information about natural persons providing personal advice on more complex products to retail clients under a licence (referred to as ‘relevant providers’).

Schedule 2 imposes an obligation on ASIC to maintain a register of relevant providers and outlines the content of that register.

Schedule 3 provides transitional and application provisions that apply from the day the instrument is registered to 30 September 2015.

Schedule 1 – Amendments relating to modifications of the Act

Item 1

Item 1 inserts a new regulation 7.6.02AI which modifies Part 7.6 Division 9 of the Act, as set out in the new Schedule 8D. The item relies upon the power in section 926B to modify the operation of Part 7.6.

Item 2 - Modifications of Division 9 of Part 7.6 of the Act

Item 2 inserts a new Schedule 8D into Part 7.6 of the Act.

Section 922C - Definitions

The new section 922C provides definitions for the purposes of the new provisions inserted into Division 9, Part 7.6 of the Act.

Basic banking product and consumer credit insurance

Section 922C defines *basic banking product* and *consumer credit insurance* by reference to the existing definitions in the Act and the *Insurance Contracts Act 1984*. These two concepts are utilised in the definition of ‘relevant financial products’.

Body corporate licensee

Section 922C defines a *body corporate licensee* as a body corporate that holds an Australian Financial Services Licence (licence) and is authorised by ASIC to provide personal advice in relation to relevant financial products to retail clients.

Body corporate licensee is defined for the purposes of sections 922J and 922K which require body corporate licensees to provide the name of any persons who control it.

Class of product advice

Section 922C defines *class of product advice*, as advice in relation to a class of products, but not a recommendation about a specific product in a class.

The definition picks up the existing definition of class of product advice in the Principal Regulations (see subregulation 7.6.04(3)).

Control

The Principal Regulations define the meaning of *control* in relation to licensees. This existing definition is used in the Regulation to require body corporate licensees to notify ASIC about a person who starts to control it or ceases to control it (see sections 922J and 922K).

ASIC is required to display a body corporate licensee’s controlling person(s) on the register (see regulation 7.6.06B).

Use of the term person in subregulation 7.6.04(2) does not preclude body corporates being listed given section 2C of the *Acts Interpretation Act 1901*.

Recent advising history

Section 922C provides that *recent advising history* is defined in section 922G.

Relevant financial products

Section 922C defines *relevant financial products* for the purposes of defining the scope the register.

Only natural persons who are authorised to provide personal advice on relevant financial products will be captured on the register. The definition seeks to capture those financial products which are generally considered to be ‘more complex’.

Relevant financial products are defined in the Regulation by excluding financial products which are ‘less complex’. That is, those financial products which are basic banking products, general insurance products, consumer credit insurance, or a combination of any of these three categories.

The scope of relevant financial product is consistent with the Future of Financial Advice (FOFA) reforms in Part 7.7A of the Act, as the references to general insurance product in the FOFA legislation do not make any distinction between different types of general insurance products (such as accident and personal sickness insurance).

Relevant provider

Section 922C provides the definition of *relevant provider*, also for the purposes of defining the scope of the register.

The intent of the definition is to capture all natural persons who provide personal advice under a licence on relevant financial products to retail clients.

This scope captures individuals typically labelled ‘financial advisers or planners’, but also includes a wide range of advisers in related sectors, including stockbrokers, insurance brokers, accountants and some bank employees.

The register is designed as a tool for consumers and therefore it will only capture natural persons who provide personal advice to *retail clients* – these are consumers or small businesses. The scope does not capture individuals who advise wholesale clients exclusively.

In order to capture all natural people who can provide personal advice on relevant financial products to retail clients, the definition includes both natural person licensees and natural person representatives.

Paragraph (a) of the definition specifies that only natural persons can be relevant providers. A relevant provider cannot be a corporation, partnership or a trust. This is because the intention of the register is to provide information on individual financial advisers operating within the industry.

Paragraph (b) of the definition specifies that a relevant provider must either be a financial services licensee themselves, an authorised representative of a licensee, an employee or director representative of a licensee or an employee or director of a related body corporate of a licensee.

Paragraph (c) of the definition narrows the scope by reference to two concepts, personal advice and relevant financial products. This means that a natural person is only a relevant provider if they fall within one of the categories outlined in paragraph (b) and they are authorised by a licensee (or as a licensee themselves) to provide personal advice on relevant financial products.

Personal advice is defined in subsection 766B(3) of the Act.

The definition *relevant provider* is intended to capture all those natural persons who are currently authorised to provide personal advice on relevant financial products to retail clients, regardless of whether they actually provide such advice on a frequent basis.

Section 922D – Obligation to notify ASIC about a person who becomes a relevant provider

Section 922D outlines that a notice must be lodged with ASIC when a person becomes a relevant provider, and that when a notice is lodged, it must be lodged in accordance with section 922L.

Section 922L provides that a notice must be lodged in a prescribed form, it specifies who must lodge the notice, and when the notice must be lodged.

Section 922D also outlines that the contents of the notice must be in accordance with section 922E (for relevant providers who are licensees) or section 922F (for relevant providers who are representatives of licensees).